The Law Society

Adjudication in a matter raised by VG

Law Society Freedom of Information Code

October 2013

1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code in its answers to a series of questions about its actions in relation to a regulated firm which was put into administration in 2013 with very substantial liabilities.

2. Background

On 10 July 2013 an applicant, known here simply as VG, asked a series of five questions of the Solicitors Regulation Authority (SRA) about a legal firm called Recompense Ltd which, trading as Eastleys, was put into administration earlier in the year. The SRA referred his questions to The Law Society's Information Compliance Manager, Mr Bob Stanley and on the next day VG added an additional question in an email to Mr Stanley. The six questions were:

1. When did the SRA first become aware of the financial difficulties of Messrs Eastleys and was it prior to the first administration of the firm?

2. Did the SRA receive complaints from members of the public prior to the SRA involvement, if so how many, and how many subsequent to any SRA interest?

3. Please confirm, as I have been informed by your staff, that the SRA has been monitoring Messrs. Eastleys for 18 months prior to the failure of the firm and of Recompense and had the SRA been monitoring Recompense in a similar manner after complaints or otherwise?

4. Although you refused to confirm liability/asset figures in the public domain regarding the financial history and current liabilities of Recompense and Eastleys please now confirm, or deny, that the SRA knew of the financial seriousness of the viability of Recompense and Eastleys before this second administration and closure of the business and especially that Eastleys took with them to Recompense one year ago some £3,000,000.00 liabilities and that on closure of these businesses the total liabilities of Recompense Ltd, trading as Eastleys, was in excess of £10,000,000.00 and assets of less than £900,000.00.

5. Please confirm , or deny, that the SRA knew that certain partners in Eastleys at the time of being bought by Recompense moved to Recompense Ltd and continued trading.

6. What information you have held for the past two years relating to the ongoing "risk assessment/score" of Eastleys and Recompense together with details of the SRA knowledge of the loans and mortgages given to these companies by Law Finance Ltd. I am aware of the reduction in the score of Eastleys having asked for this information on a previous occasion but having been ignored by the SRA.

On 7 August the Society gave the SRA's response to VG's requests. It said it was withholding the requested information under Section 14.5 of the Society's Freedom of Information Code ("the Code"). This section of the Code states that the Society does not have to release information about specific investigations, disciplinary cases or applications arising from its regulatory role. The Society said that, in applying this exception, it had carried out a 'public interest test' in relation to the release of the regulatory information requested. The Society's view was that it would not be in the public interest to release the information because it related to "ongoing regulatory matters" and publication would be likely to prejudice these matters. The Society said that in reaching this decision it had taken into consideration the fact that information disclosed in response to Freedom of Information requests is deemed to have been placed into the public domain, and not just disclosed to the person making the request.

The Society did, however, provide VG with some information it suggested was relevant to questions 3 and 5.

In relation to question 3, it provided a weblink to a page on the SRA website (http://www.sra.org.uk/solicitors/freedom-in-practice/ofr/supervision-pilot.page.) The Society said that this provided an explanation of Supervision's role and constructive engagement.

In relation to question 5, the Society confirmed that solicitors have obligations under the SRA Practising Regulations 2011 to provide information to the SRA. It suggested some Regulations which it said were relevant to VG's request: Regulation 11.2(h) of the SRA Practising Regulations 2011 provides that solicitors are required to provide details of their place of business to the SRA; Information regarding Regulation 15.1(g)(i) of the SRA Practising Regulations 2011 provides that solicitors are required to provide information to the SRA when they become a manager of a recognised body.

The Society then gave VG the names of three individuals it said were Directors of Recompense Limited and the dates of their appointment. It said that the same individuals had also been Partners at Eastleys and gave the dates between which they had held those posts.

Finally, the Society told VG that, under the Code, he had the right to have the Society's decision to withhold information referred to the independent Freedom of Information adjudicator.

3. Submission by VG

On 15 and 16 August VG made a number of points to be taken into account in any adjudication.

He said he wanted to contest the Society's decision but without access to the information he was estopped from doing so. He thought the decision flew in the face of "public interest" because the figures he wanted the Society to confirm as having been in the SRA's knowledge, together with the timescale of monitoring them, would suggest to the public that the SRA had "fouled up" and were now embarrassed by their lack of action.

He noted that whereas the SRA said that the release of this information might prejudice their ongoing action, failure to release it certainly prejudices his interests and those of the many others who had been so badly affected by the conduct of the firms in question and by what he called the “protective" attitude of the SRA. He believed that there was certainly a public interest in being able to illuminate just what the SRA knew and whether or not they had acted properly. He feared that what he called the “public interest get out" could be used by the SRA to evade disclosing information that was embarrassing or actions that had been questionable or which might allow individuals to seek redress. Refusal to allow individuals the necessary "ammunition" to shine a light on possible improper practice or unprofessional conduct would be an abuse and plainly not in the public interest. It would deny innocent parties the ability to call the SRA to account.

VG then made a series of points, cited here in full, relating to each of the six questions he has asked the Society:

1. How can disclosure of this information be prejudicial to any action the SRA is taking in respect of the partners or others? We all know they were aware and were involved, why should a date matter to them?

2. If the SRA received other complaints prior to the SRA involvement this indicates that there was a "public interest" and post involvement an even greater one.

3. The SRA admitted to me on the telephone they had been monitoring for 18 months, how can putting it in writing be prejudicial except that it would then be undeniable?

4. What possible reason can the SRA have for not admitting to knowledge that any person could find by use of a company report website? Release of confirmation cannot prejudice their ongoing investigations but it can assist mine.

5. The information is, again, in the public arena, the SRA seem again to be reluctant to admit to anything that may indicate they failed to follow through with action to protect the public from the later events.

6. I had asked the SRA for details of the "risk assessments" and changes to that score. They ignored me. The information would be available elsewhere, on payment I believe, but once again hard copy is always difficult to deny.

VG said that he had gained a distinct impression that the SRA used s.14.5 of the Code and the public interest as a means of closing people down when perhaps the SRA had something they would rather not have made public or used against them. He had no doubt that the SRA had known for nearly two years that Eastleys and later Recompense were a problem; the public interest had not been served by their inaction and certainly the public interest was not served by the secrecy and refusal of information that might show that the SRA needed to be more open and proactive He said that the many hundreds who had suffered at the hands of Eastleys and Recompense and believed the SRA had been safeguarding them could be told that someone had “fouled up”.

In a later addition to his submission VG said he was very angry that the advantage was always to the person/body refusing to release information. He wondered to whose advantage it had been to be so secretive, perhaps that of the SRA and or the solicitors in question, but certainly not his or that of the public at large. The refusal stopped him from using judicial review or other means of displaying what he called their partiality, so it was inequitable and undemocratic. He thought the refusal by the SRA cut the ground from under his feet and he could not see how it assisted the confidentiality of the solicitors, only of the SRA.

On 13 September VG added to his submission an apparently well-informed article concerning the collapse of Eastleys, citing a source from its administrators as forecasting that its principal secured creditor would be likely to receive a small fraction of what it was owed, while all the unsecured creditors, including its staff and clients, were likely to receive nothing.

In light of the article VG asked: "If the SRA was 'monitoring' for 18 months surely they knew….? I tried several times to get some details on the re-assessment of the Credit Score but was ignored. How can they monitor for 18 months and not notice? Whilst nothing can be done about the failure of the firm surely the SRA need to answer questions when 14 million pounds is owed by so small a Devon solicitors' firm?"

4. Submission by The Law Society

On 13 September the Society made its submission. Much of it detailed the very information which it had withheld from VG and which the Society argued it would be contrary to the public interest to disclose, since it concerns current investigations.

5 Further enquiries

Having considered the Society's detailed answers to VG's questions, supplied to me in confidence, I concluded that there were two strong public interests at play, potentially in conflict with one another. The first was the public interest in ensuring that the SRA's regulatory investigations and any proposed actions were not impeded by premature disclosure; the second was the public interest in being able to hold the SRA to account for the timeliness and appropriateness of any investigation or regulatory intervention following its receipt of reports. I said that I remained to be convinced that the former would be put at risk by the SRA answering more of VG's questions.

There then continued a lengthy series of exchanges with the Society in which I invited the SRA to give specific illustration of how damage might be done to SRA investigations or regulatory action by various further disclosures. I continued to find some of the SRA's answers unconvincing.

Finally, on 24 September, the Society accepted my invitation for the SRA to reconsider its original responses to VG's questions and to release further information wherever it was possible to do so without causing credible risk to current investigations or future action.

As a result, on 2 October, The Law Society said that Mr Stanley would respond directly to VG with the following answers:

1. ***When did the SRA first become aware of the financial difficulties of Messrs Eastleys and was it prior to the first administration of the firm?***

   The first complaint the SRA had received about financial instability for Eastleys was in 2010, This led to the first forensic investigation. Subsequently, two further investigations were commissioned, the final one being completed in March 2012, prior to the pre-pack administration of Eastleys to Recompense. The report concluded that the firm was in financial difficulty, however, it was considered that a pre-pack would be a more desirable outcome rather than an intervention. Following the pre-pack to Recompense in July 2012 a further investigation was commissioned to look into whether Recompense was trading insolvent due to the large amount of debt owed to Law Finance Limited. In May 2013 Recompense was placed into administration by Law Finance Limited. In light of the failure of Recompense a mere 10 months after Eastleys, SRA Forensics Investigations was commissioned to investigate what lead to the failure.

2. ***Did the SRA receive complaints from members of the public prior to the SRA involvement, if so how many, and how many subsequent to any SRA interest.***

   We have interpreted your request to mean that you are seeking information regarding the number of reports the SRA has received from members of the public as this is how information received by the SRA is categorised. The SRA only categorises complaints about itself to be complaints.

   We would like to reiterate that events are not complaints, events are intelligence reports. These can be from anonymous sources, complaints about the firm from the public or even internal reports made within the organisation. To make the assumption that all events are complaints would be misleading. In order to be more precise and to limit any confusion we have added the number of reports received from the public.

   Since 2007, 110 events have been raised for Recompense Ltd of which 8 were reports from the Public. Since 1999, 194 events have been raised for Eastleys of which 17 were reports from the Public. The SRA has been involved in considering all events raised for Recompense Ltd and Eastleys since its creation in 2007. The SRA would have taken the appropriate action at the time of consideration.

   Some events are still subject to the ongoing investigation by the SRA. The details of some of these reports will be pertinent to the ongoing investigation into the firm and any allegations that it has breached Principle 8 and therefore it would not be in the public interest for this information to be disclosed.

3. ***Please confirm, as I have been informed by your staff, that the SRA has been monitoring Messrs Eastleys for 18 months prior to the failure of the firm and of Recompense and had the SRA been monitoring Recompense in a similar manner after complaints or otherwise?***

You have previously been provided with information regarding the role and remit of the SRA Supervision Unit. Supervision is responsible for the entire regulated community and firms are allocated Supervisors on a risk and impact basis. It is for the allocated Supervisor to deal with any issues arising regarding the firm. Both of these firms were allocated a Supervisor.

4. ***Although you refused to confirm liability/asset figures in the public domain regarding the financial history and current liabilities of Recompense and Eastleys please now confirm, or deny, that the SRA knew of the financial seriousness of the viability of Recompense and Eastleys before this second administration and closure of the business and especially that Eastleys took with them to recompense one year ago some £3,000,000.00 liabilities and that on closure of these businesses the total liabilities of Recompense Limited trading as Eastleys was in excess of £10,000,000.00 and assets of less than £900,000.00.***

   The SRA's awareness of, and the information that we hold on financial history and liabilities of the firms, is integral to our investigation. We cannot comment on the viability of the businesses as again this will be a pertinent aspect of our ongoing investigation. To make such statements prior to raising any formal allegations with the partners/directors would be potentially detrimental to our investigation and as such would not be in the public interest.

5. ***Please confirm, or deny, that the SRA knew that certain partners in Eastleys at the time of being bought by Recompense moved to Recompense Ltd and continued trading.***

   This information was provided in my original response to your request on 7 August as follows:

   "In relation to point 5 I can confirm that, solicitors have obligations under the SRA Practising Regulations 2011 to provide information to the SRA. The following Regulations are relevant to your request for information: Regulation 11.2(h) of the SRA Practising Regulations 2011 provides that solicitors are required to provide details of their place of business to the SRA. Information regarding Regulation 15.1(g)(i) of the SRA Practising Regulations 2011 provides that solicitors are required to provide information to the SRA when they become a manager of a recognised body.

   The following individuals are Directors of Recompense Limited:

   [name redacted by adjudicator] has been a Director since 1 May 2004

   [name redacted by adjudicator] has been a Director since 1 May 2004.

   [name redacted by adjudicator]has been a Director since 1 May 2004.

   The directors listed above were also Partners at Eastleys between the following dates:

[name redacted by adjudicator] was a Partner between 1 October 2003 and 17 April 2012..

[name redacted by adjudicator] was a Partner between 1 April 1996 and 3 August 2012.

[name redacted by adjudicator] was a Partner between 1 October 1998 and 3 August 2012."

6. ***What information you have held for the past two years relating to the ongoing "risk assessment/score" of Eastleys and Recompense together with details of the SRA knowledge of the loans and mortgages given to these companies by Law Finance Ltd. I am aware of the reduction in the score of Eastleys having asked for this information on a previous occasion but having been ignored by the SRA.***

   We are not aware that you have been provided with this information as it is confidential. The SRA adopts a risk-based approach to regulation. This means that we focus on firms and behaviour that causes the most risk to the public. We have developed systems for assessing the reports we receive for risk. All reports are assessed against 180 types of risk. Following an initial assessment (to ensure there is nothing urgent upon which we need to act immediately) information is fully risk assessed. This helps us to determine the appropriate regulatory response. If you would like further information on how we assess risk, please see the "Risk-based regulation" section of our website which can be found at www.sra.org.uk.

   The information we hold with regards to the risk assessing and scoring of Eastleys and Recompense forms part of our investigation as will any details we hold about loans and mortgages. Information regarding the financial difficulties of the firm is fundamentally linked to any potential allegations which may be raised against both the firms and/or their members. To release this information would prejudice our investigation and the proper discharge of our regulatory function and as such the public interest in withholding the information outweighs the public interest in disclosure.

On 3 October the Society provided VG with these answers.

6 Adjudication

There is no doubt that the information requested by VG is about specific investigations arising from the SRA's investigatory role. It therefore falls within section 14.5 of the Code and the Society was entitled to withhold it, but only if the balance of public interest is against publication.

So this case is all about where that balance lies: between protecting the SRA's regulatory work and opening the effectiveness of its actions up to public scrutiny.

In this case, VG appears to suspect that the SRA was slow to act on information which might have enabled it to avert the collapse of Eastleys within nine months of its having been bought in a pre-pack sale by Recompense, or at least to ameliorate

the consequences upon some of its creditors whose losses appear to have exceeded £12m.

It seems to me that there is an extremely strong public interest in much, perhaps all, of the information requested by VG and supplied to me in confidence being publicly available. The question is when. Disclosure now would come too late to affect the outcome of Eastleys' collapse, whereas I accept that disclosure now of some of the information could potentially have an adverse effect upon the likely success of any forthcoming SRA regulatory action.

The outcome of this adjudication is probably unsatisfactory to all parties. The SRA has ended up disclosing information it was extremely reluctant to disclose. VG is likely to judge that those disclosures still fall well short of full public accountability. I, too, have found it unsatisfactory. Where the Society is to rely upon any of the Code exceptions that require a public interest test, it must be in a position to give the adjudicator a credible explanation of how publication of specific information in specific cases could be against the public interest. The SRA could not, or did not, do so in respect of some of the information VG had requested. The SRA is committed by The Law Society's FoI Code to publication as the default position: it has the onus to show why anything other than publication is the right response.

Richard
Ayre
Freedom of Information
Adjudicator
4 October 2013